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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT TACOMA

10 EDWARD R. STALCUP,

11                   Petitioner,

12                   v.

13 KENNETH QUINN,

14                   Respondent.

15                   Case No. C06-5101RBL

16                   REPORT AND  
17                   RECOMMENDATION

18                   **NOTED FOR:**  
19                   June 2<sup>nd</sup>, 2006

20                   This 28 U.S.C. § 2254 petition for habeas corpus relief has been referred to the undersigned  
21 Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4. When the court  
22 reviewed the petition it appeared the petition was time barred by the one year statute of limitations  
23 imposed under the 1996 amendments to 28 U.S.C. § 2244(d), which were signed into law April 24,  
24 1996 as part of the Antiterrorism and Effective Death Penalty Act (AEDPA). 28 U.S.C. § 2244(d)  
provides as follows:

25                   (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a  
26 person in custody pursuant to the judgment of a State court. The limitation period shall run  
from the latest of-

27                   (A) the date on which the judgment became final by conclusion of direct review or  
28 the expiration of the time for seeking such review;

29                   (B) the date on which the impediment to filing an application created by State action

30 ORDER- 1

1 in violation of the constitution or laws of the United States is removed, if the applicant was  
2 prevented from filing by such State action;

3 (C) the date on which the factual predicate of the claim or claims presented could  
have been discovered through the exercise of due diligence.

4 (2) The time during which a properly filed application for State post-conviction or other  
collateral review with respect to the pertinent judgment or claim is pending shall not be  
5 counted toward any period of limitation under this subsection.

6 The state direct appeal process was concluded at the latest December 31<sup>st</sup>, 1999.

7 An order to show cause was entered and petitioner has responded. (Dkt. # 4). Petitioner  
8 argues the case of Arendi v. New Jersey, 530 U.S. 466 (2000), applies retroactively. He cites  
9 Reynolds v. Cambria, 136 F.Supp 2d. 1071 (C.D. Cal 2001). (Dkt. # 4, page 2). Reynolds was  
10 reversed on appeal. See, Reynolds v. Cambria, 290 F.3rd 1029 (9th Cir. 2002).

11 The Ninth Circuit has held Arendi does not apply retroactively. Rees v. Hill, 286 F.3rd  
12 1103 (9th Cir. 2002). This petition is time barred. The court recommends **DISMISSAL** of this  
13 petition as time barred.

14 CONCLUSION

15 This petition is time barred. Accordingly, the petition should be **DISMISSED WITH**  
16 **PREJUDICE**. A proposed order accompanies this report and recommendation.

17 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the  
18 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.  
19 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
20 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
21 72(b), the clerk is directed to set the matter for consideration on **June 2<sup>nd</sup>, 2006**, as noted in the  
22 caption.

23 Dated this 8<sup>th</sup> day of May, 2006.

24  
25 /S/ J. Kelley Arnold  
26 J. Kelley Arnold  
27 United States Magistrate Judge  
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